



The Regular Meeting of the West Valley City Council will be held on Tuesday, November 18, 2014, at 6:30 PM, in the City Council Chambers, West Valley City Hall, 3600 Constitution Boulevard, West Valley City, Utah. Members of the press and public are invited to attend.

Posted 11/12/2014, 5:00 p.m.

A G E N D A

1. Call to Order
2. Roll Call
3. Opening Ceremony: Councilmember Lars Nordfelt
4. Special Recognitions
5. Approval of Minutes:
 - A. October 28, 2014 (Regular Meeting)
 - B. November 4, 2014 (Regular Meeting)
6. Awards, Ceremonies and Proclamations:
 - A. Employee of the Month, November 2014 - Tyson Emmett, IT Division/Administration
 - B. Proclamation Declaring November 29, 2014 as Small Business Saturday in West Valley City
7. Comment Period:

(The comment period is limited to 30 minutes. Any person wishing to comment shall limit their comments to five minutes. Any person wishing to comment during the comment period shall request recognition by the Mayor. Upon recognition, the citizen shall approach the microphone.)

West Valley City does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting and we will try to provide whatever assistance may be required. The person to contact for assistance is Sheri McKendrick.

All comments shall be directed to the Mayor. No person addressing the City Council during the comment period shall be allowed to comment more than once during that comment period. Speakers should not expect any debate with the Mayor, City Council or City Staff; however, the Mayor, City Council or City Staff may respond within the 30-minute period.)

- A. Public Comments
 - B. City Manager Comments
 - C. City Council Comments
8. Public Hearings:
- A. Accept Public Input Regarding Application No. ZT-5-2014, filed by West Valley City, Requesting a Zone Text Amendment to Establish Requirements for Alternative Financial Service Providers
 - i Action: Consider Ordinance No. 14-41, Enacting Section 7-2-133 of the West Valley City Municipal Code to Establish Requirements for Alternative Financial Service Providers
9. Resolutions:
- A. 14-185: Approve a Federal Aid Agreement with the Utah Department of Transportation for Traffic Signal Improvements at 4100 South 1300 West, 4100 South 2700 West and 4100 South 4000 West
 - B. 14-186: Approve a Franchise Agreement with Teleport Communications America, LLC for a Telecommunications Network in the City
10. Motion for Executive Session
11. Adjourn

MINUTES OF COUNCIL REGULAR MEETING – OCTOBER 28, 2014

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, OCTOBER 28, 2014, AT 6:32 P.M., IN THE COUNCIL CHAMBERS, WEST VALLEY CITY HALL, 3600 CONSTITUTION BOULEVARD, WEST VALLEY CITY, UTAH. THE MEETING WAS CALLED TO ORDER AND CONDUCTED BY MAYOR BIGELOW.

THE FOLLOWING MEMBERS WERE PRESENT:

Ron Bigelow, Mayor
Corey Rushton, Councilmember At-Large
Lars Nordfelt, Councilmember At-Large
Tom Huynh, Councilmember District 1
Steve Buhler, Councilmember District 2
Karen Lang, Councilmember District 3
Steve Vincent, Councilmember District 4

Wayne Pyle, City Manager
Sheri McKendrick, City Recorder

STAFF PRESENT:

Nicole Cottle, Assistant City Manager/CED Director
Eric Bunderson, City Attorney
Jim Welch, Finance Director
Russell Willardson, Public Works Director
John Evans, Fire Chief
Sam Johnson, Strategic Communications Director
Anita Schwemmer, Acting Police Chief
Chris Curtis, Acting CPD Director
Jake Arslanian, Public Works Department

16791 **OPENING CEREMONY**

The Opening Ceremony was conducted by Steve Vincent who led the Pledge of Allegiance to the Flag.

16792 **SCOUTS**

Mayor Bigelow welcomed Scout Troop No. 4 in attendance to complete requirements for the Citizenship in the Community merit badge.

16793 **APPROVAL OF MINUTES OF REGULAR MEETINGS HELD OCTOBER 7, 2014, AND OCTOBER 14, 2014**

The Council read and considered Minutes of the Regular Meetings held October 7, 2014, and October 14, 2014. There were no changes, corrections or deletions.

MINUTES OF COUNCIL REGULAR MEETING – OCTOBER 28, 2014

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After discussion, Councilmember Lang moved to approve the Minutes of the Regular Meetings held October 7, 2014, and October 14, 2014, as written. Councilmember Buhler seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16794 **PROCLAMATION DECLARING NOVEMBER 1, 2014, AS “EXTRA MILE DAY” IN WEST VALLEY CITY**

Councilmember Vincent read a Proclamation declaring November 1, 2014, as “Extra Mile Day” in West Valley City.

16795 **COMMENT PERIOD**

Upon inquiry by Mayor Bigelow there was no one in attendance who desired to address the City Council during the comment period.

16796 **RESOLUTION NO. 14-180, AUTHORIZE THE CITY TO ACQUIRE, BY NEGOTIATION OR CONDEMNATION, REAL PROPERTY FROM JULIE ANN COOPER LOCATED AT 3027 – 3035 WEST LEON AVENUE**

Mayor Bigelow presented proposed Resolution No. 14-180 that would authorize the City to acquire, by negotiation or condemnation, real property from Julie Ann Cooper, located at 3027 – 3035 West Leon Avenue.

He stated the City was currently attempting to purchase land at the above location and, at present, it appeared condemnation would be necessary to complete that acquisition. The proposed resolution was being requested in the likely event that condemnation became necessary.

The house located at 3027 – 3035 West Leon Avenue was in a group of houses the City must own in order to build a roadway through the Fairbourne Station development. The City had been unsuccessful in attempting to contact Ms. Cooper. A condemnation action would require the appraised value of the property be placed into escrow. The City would file a Motion for Default and a Motion for Immediate Occupancy and, upon order from the Court, receive title to

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the property and build the road. Ms. Cooper's money would earn interest in escrow until claimed.

After discussion, Councilmember Rushton moved to approve Resolution No. 14-180, a Resolution Authorizing the City to Acquire, by Negotiation or Condemnation, Real Property from Julie Ann Cooper Located at 3027 – 3035 West Leon Avenue. Councilmember Nordfelt seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16797

RESOLUTION NO. 14-181, AUTHORIZE WEST VALLEY CITY POLICE DEPARTMENT TO ACCEPT AN AWARD FROM THE COPS HIRING PROGRAM THROUGH THE U.S. DEPARTMENT OF JUSTICE

Mayor Bigelow presented proposed Resolution No. 14-181 that would authorize the West Valley City Police Department to accept an award in the amount of \$1,250,000.00 from the COPS Hiring Program through the U.S. Department of Justice.

He stated the awarded funds would be utilized to hire ten additional police officers to help the Police Department meet the growing needs of the City and provide exceptional service to its residents. In order to accept the award the City would be required to provide a cash match of \$626,922.00 over the course of three years.

West Valley City had seen a large increase in population during its history, making it difficult for the Police Department to provide the kind of service residents expected and deserved. Although the Police Department strived each and every day to provide excellent service, having more officers on the road would mean a quicker response time and more time to devote to each case being investigated.

As officers were hired with the subject grant, the intent would be to create a new unit called the Fast Action Unit consisting of five officers and a sergeant. These added resources would be directed to implement intervention strategies that

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targeted persistent or emerging crime problems or community concerns adversely impacting quality of life. The remaining four officers would be assigned to the Community Response Unit. Members of this unit were assigned to specific geographical areas within the City. Their assignment would include regular contact with citizens in their neighborhoods. These officers would be a direct source of contact as they would be familiar with the unique challenges of each neighborhood and be part of a permanent solution. They would be gatherers of intelligence information to be used to arrest suspects committing crimes that impacted the quality of life in the neighborhoods.

Upon discussion, Councilmember Buhler stated it was good to bring monies back to the City thus providing better service to the residents.

Councilmember Buhler moved to approve Resolution No. 14-181, a Resolution Authorizing the Acceptance of a COPS Hiring Program Grant through the U.S. Department of Justice. Councilmember Huynh seconded the motion.

Mayor Bigelow called for discussion on the motion.

Councilmember Vincent suggested the Council would revisit and evaluate this program when giving consideration to the additional City funds required upon expiration of the federal grant.

Mayor Bigelow expressed concern that the matching funds were not in the current budget and inquired if funds had been identified for future funding of the grant.

City Manager, Wayne Pyle, responded funding for the City's matching portion of the federal grant had not been identified in this year's budget or in future budgets, as yet. He explained matching funding could be found in the fund balance, including some cost savings to be identified in the general fund and individual department budgets. He noted the proposed grant program was a three-year program with incremental increases. He advised West Valley City had participated in this federal program numerous times over the years and matching funds had successfully been taken from the fund balance, departmental savings, and additional revenue sources.

Mayor Bigelow stated this would commit future revenues giving this program priority over other projects. He expressed a dislike to agree to spend money we do not have, but will probably realize some time in the future. He stated he would rather revenue sources be identified in the budget process, and added his vote was particularly difficult as he did not desire to say no to additional officers.

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Upon further inquiry, the City Manager advised the fund balance would cover the matching funds, with those funds being set aside for this program with Council approval.

Mr. Pyle explained difficulties of the grant application process particularly not knowing the matching amounts to be budgeted. He further explained matching dollar amounts were not known until after formal application for the grant and once the grant was awarded it was still a tentative process because it would be possible and completely acceptable for a Council to reject the grant application. He indicated the City was trying to build the Police Department long term while finding itself always behind the curve. He advised that with the grant method, additions to the police force could be made while not bearing huge costs all at one time. He encouraged the Council to carefully decide if this was a long term “build” to increase the City’s public safety resources.

Upon inquiry by Mayor Bigelow regarding if the federal government was trying to force the City to expand its police force, the City Manager indicated he did not think so. He explained the federal grant was a tool to encourage the City’s participation, but the decision was made totally by the City Council. He stated if the City did not intend to keep the officers funded at the end of the grant period with this program, no application would be made in the future.

Mayor Bigelow stated history would bear out that the federal program grants were fully anticipated to be continued by municipalities when the grant expired. The Mayor recommended next year’s budgeting process include setting aside funds for unanticipated matching fund needs.

Councilmember Huynh stated every year the Council held a Strategic Planning meeting and discussed many issues and suggested this topic be an agenda item for further discussion.

Councilmember Rushton stated he desired to speak in favor of the proposed Resolution as he thought the City fortunate to be receiving this grant. He indicated residents continued to request expansion of the narcotics unit and the new unit would address those citizen requests. He informed he did not have reservations about the program as this expenditure seemed a small amount to provide added public safety services not being covered now, which was a major responsibility of the City. He expressed pleasure at having received the grant and stated with four years and planning it would be beneficial to citizens of West Valley City. He stated the grant was an attempt to prevent cities from downsizing public safety departments and West Valley City would have three years to budget for the program.

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Mayor Bigelow expressed concurrence with Councilmember Rushton's remarks and expressed a desire to increase officers but indicated he would prefer to integrate matching grant funds into the annual budget process.

Mayor Bigelow called for a vote on the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16798

RESOLUTION NO. 14-182, RATIFY THE CITY MANAGER'S APPOINTMENT OF MEMBERS TO THE UTAH CULTURAL CELEBRATION CENTER FOUNDATION COMMITTEE

Mayor Bigelow presented proposed Resolution No. 14-182 that would ratify the City Manager's appointment of members to the Utah Cultural Celebration Center Foundation Committee.

He stated the proposal would appoint Rita Martin and V. Kim Martinez to the Utah Cultural Celebration Center Foundation Committee for the term October 1, 2014 through September 30, 2016.

After discussion, Councilmember Vincent moved to approve Resolution No. 14-182, a Resolution Ratifying the City Manager's Appointment of Members to the Utah Cultural Celebration Center Foundation Committee. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

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Unanimous.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY CITY COUNCIL, THE REGULAR MEETING OF TUESDAY, OCTOBER 28, 2014, WAS ADJOURNED AT 7:00 P.M., BY MAYOR BIGELOW.

I hereby certify the foregoing to be a true, accurate and complete record of the proceedings of the Regular Meeting of the West Valley City Council held Tuesday, October 28, 2014.

Sheri McKendrick, MMC
City Recorder

MINUTES OF COUNCIL REGULAR MEETING - NOVEMBER 4, 2014

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, NOVEMBER 4, 2014, AT 6:30 P.M., IN THE COUNCIL CHAMBERS, WEST VALLEY CITY HALL, 3600 CONSTITUTION BOULEVARD, WEST VALLEY CITY, UTAH. THE MEETING WAS CALLED TO ORDER AND CONDUCTED BY MAYOR BIGELOW.

THE FOLLOWING MEMBERS WERE PRESENT:

Ron Bigelow, Mayor
Corey Rushton, Councilmember At-Large
Lars Nordfelt, Councilmember At-Large
Tom Huynh, Councilmember District 1
Karen Lang, Councilmember District 3
Steve Vincent, Councilmember District 4

Wayne Pyle, City Manager
Sheri McKendrick, City Recorder

ABSENT: Steve Buhler, Councilmember District 2 (Excused)

STAFF PRESENT:

Paul Isaac, Assistant City Manager/HR Director
Nicole Cottle, Assistant City Manager/CED Director
Eric Bunderson, City Attorney
Jim Welch, Finance Director
Lee Russo, Police Chief
John Evans, Fire Chief
Russell Willardson, Public Works Director
Sam Johnson, Strategic Communications Director
Jason Erekson, Acting Parks and Recreation Director
Jake Arslanian, Public Works Department

16799 **OPENING CEREMONY**

The Opening Ceremony was conducted by Corey Rushton who noted today was Election Day and shared a public service announcement of President Kennedy urging people to vote. He then led those in attendance in reciting the Pledge of Allegiance to the Flag.

16800 **SCOUTS**

Mayor Bigelow welcomed Scout Troop Nos. 236, 1415 and 766 in attendance at the meeting to complete requirements for the Citizenship in the Community merit badge.

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16801 **APPROVAL OF MINUTES OF REGULAR MEETING HELD OCTOBER 21, 2014**

The Council read and considered Minutes of the Regular Meeting held October 21, 2014. There were no changes, corrections or deletions.

After discussion, Councilmember Vincent moved to approve the Minutes of the Regular Meeting held October 21, 2014, as written. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16802 **COMMENT PERIOD**

Upon inquiry by Mayor Bigelow the following individuals addressed the City Council during the comment period:

A. **PUBLIC COMMENTS**

Kathy Ballard addressed the City Council and expressed concern about a safety hazard previously reported to the Police Department. She advised it had not yet been taken care of. She discussed widening of 3200 West several years ago and the option to have a cut-out in front of her property to use as parking. Ms. Ballard indicated some of her neighbors parked on the street or on the sidewalk which caused her to not be able to see when backing out of her driveway. She advised she had complained to the City and Police Department via telephone and on-line; but the problem still had not been resolved. She distributed photographs to members of the City Council.

B. **CITY MANAGER COMMENTS**

City Manager, Wayne Pyle, advised he would assign appropriate staff to contact Ms. Ballard and discuss her concerns.

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16803

CONSENT AGENDA:

A. RESOLUTION NO. 14-183, RATIFY THE CITY MANAGER'S APPOINTMENT OF FRED DARLING AS A MEMBER OF THE WEST VALLEY CITY CLEAN & BEAUTIFUL COMMITTEE FOR THE TERM NOVEMBER 4, 2014 – JUNE 30, 2018

Mayor Bigelow presented proposed Resolution No. 14-183 that would ratify the City Manager's appointment of Fred Darling as a member of the West Valley City Clean & Beautiful Committee for the term November 4, 2014, through June 30, 2018.

B. RESOLUTION NO. 14-184, RATIFY THE CITY MANAGER'S APPOINTMENT OF SAMADHI ISHAYA AS A MEMBER OF THE WEST VALLEY CITY CLEAN & BEAUTIFUL COMMITTEE FOR THE TERM NOVEMBER 4, 2014 – JUNE 30, 2018

Mayor Bigelow presented proposed Resolution No. 14-184 that would ratify the City Manager's appointment of Samadhi Ishaya as a member of the West Valley City Clean & Beautiful Committee for the term November 4, 2014, through June 30, 2018.

After discussion, Councilmember Rushton moved to approve Resolution Nos. 14-183 and 14-184 as presented on the Consent Agenda. Councilmember Huynh seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY CITY COUNCIL, THE REGULAR MEETING OF TUESDAY, NOVEMBER 4, 2014, WAS ADJOURNED AT 6:42 P.M., BY MAYOR BIGELOW.

MINUTES OF COUNCIL REGULAR MEETING - NOVEMBER 4, 2014

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I hereby certify the foregoing to be a true, accurate and complete record of the proceedings of the Regular Meeting of the West Valley City Council held Tuesday, November 4, 2014.

Sheri McKendrick, MMC
City Recorder

DRAFT

November 2014 EAC Employee of the Month
Tyson Emmett
Administration Department

This nomination (from me) is well overdue! And, I apologize to the committee and certainly to Tyson. The I.T. division is extremely busy hustling and bustling every day to meet our personal demands whether it is a connectivity issue with our computer or a stubborn program we need assistance with. I've worked with most of the staff and they're all simply put, wonderful to work with and quick to help. However, whether I should or shouldn't, I seem to always seek out Tyson for assistance. Tyson is always, and I say ALWAYS willing to help and quick to help. Most recently I called Tyson, and as always, he answered the phone. I discussed a solution to a problem that an employee and I were experiencing. Tyson was driving into work and within an hour after arriving at the office he had this issue resolved for us. It was then (today, right now) that I thought to myself; Tyson must be recognized! This is only one of several requests/interactions I've experienced with Tyson over the past four years. His tenacity and desire to help me quickly and as often as I request is beyond appreciative. I couldn't imagine he would treat other employees that call upon him for requests, or assignments he's assigned, any differently.

Tyson's knowledge of Sire and technical support is awesome and is always very helpful! Prior to my current assignment, and as I was working through the Powell investigation, Tyson's direction and ideas utilizing Sire was beyond helpful and saved me so much time! After the Powell investigation and working towards improving our sex offender compliance unit and creating our college internship program, again, Tyson was there to help. He was helpful in quickly establishing email accounts for the interns, researching electronics that would best assist in managing offenders, to installing a camera to photograph the offenders. I could go on and on with many more examples.

Tyson excels beyond the minimums with my questions and requests. Tyson provides creative solutions based off of the solutions I provide him, which creates an even better solution. And, he's always eager to help me and is willing to go the extra mile.

Nominated by: Ellis Maxwell, Police Department

WEST VALLEY CITY, UTAH

PROCLAMATION

**A PROCLAMATION DECLARING NOVEMBER 29, 2014
AS SMALL BUSINESS SATURDAY IN WEST VALLEY
CITY.**

WHEREAS, West Valley City celebrates our local small businesses and the contributions they make to our local economy and community; according to the United States Small Business Administration, there are currently 23 million small businesses in the United States, they represent more than 99 percent of American employer firms, create more than two-thirds of the net new jobs, and generate 46 percent of private gross domestic product; and

WHEREAS, small businesses employ over 55 percent of the working population in the United States; and

WHEREAS, 89 percent of consumers in the United States agree that small businesses contribute positively to the local community by supplying jobs and generating tax revenue; and

WHEREAS, 87 percent of consumers in the United States agree that small businesses are critical to the overall economic health of the United States; and

WHEREAS, 93 percent of consumers in the United States agree that it is important for people to support the small businesses that they value in their community; and

WHEREAS, West Valley City supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

WHEREAS, advocacy groups as well as public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

NOW, THEREFORE, we, the Mayor and the City Council of West Valley City, do hereby proclaim November 29, 2014, as Small Business Saturday in West Valley City, and urge the residents of our community, and communities across the county, to support small businesses and merchants on Small Business Saturday and throughout the year.

DATED this _____ day of _____ 2014.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

The comment period is limited to 30 minutes. Any person wishing to comment shall limit their comments to five minutes. Any person wishing to comment during the comment period shall request recognition by the Mayor. Upon recognition, the citizen shall approach the microphone. All comments shall be directed to the Mayor. No person addressing the City Council during the comment period shall be allowed to comment more than once during that comment period. Speakers should not expect any debate with the Mayor, City Council or City Staff; however, the Mayor, City Council or City Staff may respond within the 30-minute period.

Item: _____
Fiscal Impact: _____ N/A _____
Funding Source: _____ N/A _____
Account #: _____ N/A _____
Budget Opening Required: ☐

ISSUE:

Application: ZT-5-2014
Applicant: West Valley City

SYNOPSIS:

An ordinance amending Sections 7-1-103, 7-2-131 and 7-6-1002 of the West Valley City Municipal Code to make the regulations for alternative financial service providers consistent.

BACKGROUND:

On November 4, staff presented to the Council an ordinance amendment that added separation requirements for car title loan businesses from residential and commercial areas. After reviewing the amendment, the Council directed staff to consider how regulations for car title loans, check cashing, pawnshops and any other similar use could be made the same.

The proposed amendment groups car title loans, check cashing, pawnshops and unchartered financial service providers together under the umbrella of alternative financial service providers. Unchartered financial service providers are defined as businesses (excluding chartered banks) extending loans, cash advances, short term credit or similar financial services. The following separation requirements and cap from the proposed ordinance would apply to all alternative financial service providers if adopted:

- 500 feet from any residential zone or use.
- 1,000 feet from any other alternative financial service provider.
- 500 feet from any regional shopping mall.
- One alternative financial service provider shall be allowed in the City for every 10,000 citizens of the City.

It has been shown in studies nationwide that alternative financial service providers where money is easily acquired with limited credit checks such as payday lending, check cashing, and car title loan have adverse secondary effects on surrounding neighborhoods. The purpose of these regulations is to minimize the negative impacts of these businesses.

RECOMMENDATION:

The Planning Commission recommends approval of the amendment.

SUBMITTED BY:

Kevin Despain, Planner I
Steve Pastorik, Planning Director/Assistant CED Director

WEST VALLEY CITY, UTAH
ORDINANCE NO. _____

Draft Date: 11/13/2014

Date Adopted: _____

Date Effective: _____

**AN ORDINANCE AMENDING SECTIONS 7-1-103, 7-2-131,
AND 7-6-1002 OF THE WEST VALLEY CITY MUNICIPAL
CODE TO ESTABLISH REQUIREMENTS FOR
ALTERNATIVE FINANCIAL SERVICE PROVIDERS.**

WHEREAS, Title 7 of the West Valley City Municipal Code governs the uses of land within the City, under authority of the Municipal Land Use, Development, and Management Act; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in protecting City residents and visitors from criminal activity; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in fostering positive perceptions of the City and pride in our neighborhoods; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in encouraging development patterns that minimize the secondary effects of land uses, such as car title loan businesses; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in encouraging economic investment in our communities and neighborhoods; and

WHEREAS, the City has a legitimate, substantial, and compelling interest in encouraging transit oriented development, walkable communities, and increased neighborhood engagement; and

WHEREAS, studies from around the nation demonstrate that “alternative financial service” providers such as car title loan businesses, check cashers, pawnshops, payday lenders, and other similar institutions negatively impact residential property values when located nearby; and

WHEREAS, studies from cities such as Chattanooga, Tennessee and St. Louis, Missouri show that concentrations of alternative financial service providers create a perception of neighborhood decline and economic turmoil; and

WHEREAS, studies from cities such as Los Angeles, California indicate that concentrations of alternative financial service providers focus crime, create less walkable communities, and discourage the use of public transportation; and

WHEREAS, studies of American urban centers have found that concentrations of alternative financial service providers crowd out other financial service providers and commercial investment; and

WHEREAS, studies from cities such as Chicago, Illinois have shown that alternative financial service providers increase the incidence of crime in nearby blocks, and;

WHEREAS, studies from cities such as Milwaukee, Wisconsin and Chattanooga, Tennessee demonstrate that concentrations of alternative financial service providers create negative impacts on the aesthetic appeal of commercial areas; and

WHEREAS, the City Council of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to amend Sections 7-1-103 and 7-2-131 of the West Valley City Municipal Code;

NOW, THEREFORE, BE IT ORDAINED by the City Council of West Valley City, Utah, as follows:

Section 1. Repealer. Any provision of the West Valley City Municipal Code found to be in conflict with this Ordinance is hereby repealed.

Section 2. Amendment. Sections 7-1-103 and 7-2-131 are hereby amended as follows:

7-1-103. DEFINITIONS.

(10) “Alternative Financial Service Provider” means Car Title Loan Businesses, Check Cashing Businesses, Pawnbrokers, Unchartered Financial Service Providers, and any businesses or entities offering similar services.

~~(28)~~ (29) “Car Title Loan” means taking possession of or an interest in an automobile title in exchange for consideration or extending a loan. This definition includes businesses facilitating car title loans or matching customers with Car Title Loan businesses located elsewhere. This definition does not include a federal-or state-chartered bank, industrial bank, savings and loan, or credit union.

~~(31)~~ (32) “Check Cashing” means cashing a check for consideration or extending a Deferred Deposit Loan and shall include any other similar types of businesses, including but not limited to businesses licensed by the State pursuant to the Check Cashing Registration Act. ~~No check cashing or deferred deposit loan business shall be located within 600 feet of any other check cashing business. Distance requirements defined in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the entry door of each business. One check cashing or deferred deposit loan business shall be allowed for every 10,000 citizens living in West Valley City.~~ The term Check Cashing shall ~~not~~ include neither federal or state chartered banks, industrial banks, savings and loan, and credit unions nor fully automated stand alone services located inside of an existing building, so long as the automated service incorporates no signage in the windows or outside of the building.

(215) “Unchartered Financial Service Provider” shall mean any business extending loans, cash advances, short term credit, or similar financial services. This definition shall exclude federal and state chartered banks, industrial banks, savings and loan, and credit unions.

7-2-131. ~~PAWNSHOP~~ ALTERNATIVE FINANCIAL SERVICE PROVIDER REGULATIONS.

Regardless of the zoning district in which it is located, ~~a pawnshop~~ an Alternative Financial Service Provider shall be subject to the following ~~distance~~ restrictions:

- (1) No ~~pawnshop~~ Alternative Financial Service Provider shall be located within 500 feet of any residential zone or use.
- (2) No ~~pawnshop~~ Alternative Financial Service Provider shall be located within 1,000 feet of any other ~~pawnshop~~ Alternative Financial Service Provider.
- (3) No ~~pawnshop~~ Alternative Financial Service Provider shall be located within 500 feet of any regional shopping mall.
- (4) One Alternative Financial Service Provider shall be allowed in the City for every 10,000 citizens of the City.
- (5) Car Title Loan Businesses, Check Cashing Businesses, Pawnbrokers, and Unchartered Financial Service Providers are distinct land uses and cannot be substituted for one another if

said uses are nonconforming.

7-6-1002. SCHEDULE OF USES.

	Use	C-1	C-2	C-3
<u>53.</u>	<u>Unchartered Financial Service Provider</u>	<u>X</u>	<u>C</u>	<u>C</u>
53. <u>54.</u>	Uses customarily accessory to a listed permitted use	P	P	P
54. <u>55.</u>	Uses customarily accessory to a listed conditional use	P	P	P
55. <u>56.</u>	Veterinary hospital/indoor kennel	C	C	P

Section 3. Severability. If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

Section 4. Effective Date. This Ordinance shall take effect immediately upon posting in the manner required by law.

PASSED and APPROVED this _____ day of _____, 2014.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

ZT-5-2014

West Valley City

Adding Section 7-2-133 for Car Title Loan businesses regulations

As requested by the Planning Commission, City staff proposes a zoning ordinance amendment to establish separation requirements for Car Title Loan businesses as Section 7-2-133. Car Title Loans are defined as taking possession of an automobile title in exchange for consideration or extending a loan. This definition does not include a federal- or state-chartered bank or credit

union. In the past couple of years, the number of these types of businesses have essentially doubled. Many are clustered along high image corridors of the city.

It has been shown in studies nationwide that consumer lending type businesses where money is easily acquired with limited credit checks such as payday lending, check cashing, and car title loan have adverse secondary effects on surrounding neighborhoods. These businesses also negatively impact commercial areas particularly when clustered.

The City has already passed regulations for checking cashing, payday lending businesses, and pawnshops. Several municipalities across the country have passed regulations regarding the location and separation of these types of businesses.

The purpose of these regulations is to minimize the negative impacts of Car Title Loan businesses on surrounding residential and commercial areas. A study of the current distribution of Car Title Loan businesses shows that many are adjacent to residential and clustered along stretches of major arterials. The spacing of 500' from residential uses will mitigate negative effects on neighboring homes. The spacing of 600' from other Car Title Loan businesses will prevent clustering.

Included with this report are three maps showing where Car Title Loan businesses currently are allowed, areas eliminated based on the proposed regulations, and where Car Title Loan businesses would ultimately be allowed.

Staff Alternatives

1. Approval of the application to add Section 7-2-133.
2. Continuance for reasons determined during the public hearing.
3. Denial, the ordinance should remain unchanged.

7-2-133. CAR TITLE LOAN BUSINESS REGULATIONS.

Regardless of the zoning district in which it is located, a car title loan business shall be subject to the following distance restrictions:

(1) No car title loan business shall be located within 500 feet of any residential zone or use.

(2) No car title loan business shall be located within 600 feet of any other car title loan business.

Applicant:

West Valley City

Discussion: Kevin Despain presented the application. Phil Conder asked if the map that shows existing businesses was created using current business licenses. Kevin replied yes. Chairman Conder asked if someone could purchase space in an existing title loan business and operate separately. Brandon replied no and stated if they operate separately they would be required to have their own business license. Chairman Conder asked if someone would be able to open a companion business in a different location within 600 feet but had the same name and same owner. Brandon replied that this would not be allowed because the owner would need a separate business license. Kevin stated that if one of the current businesses closes someone will still have one year to fill the vacant spot. Brandon added that if the business is non-conforming someone can fill the vacancy but once the year passes it would be considered abandoned and a car title loan business would not be allowed at the location any longer. Jack Matheson stated that there are three major locations that car title loan businesses will still be allowed in that he is not comfortable with including Valley Fair Mall, Target shopping center, and the Walmart shopping center on 6200 S. Clover Meaders stated that only one car title loan business would be allowed at these locations and the ordinance will still deter any clustering which is where the issue with these businesses lie.

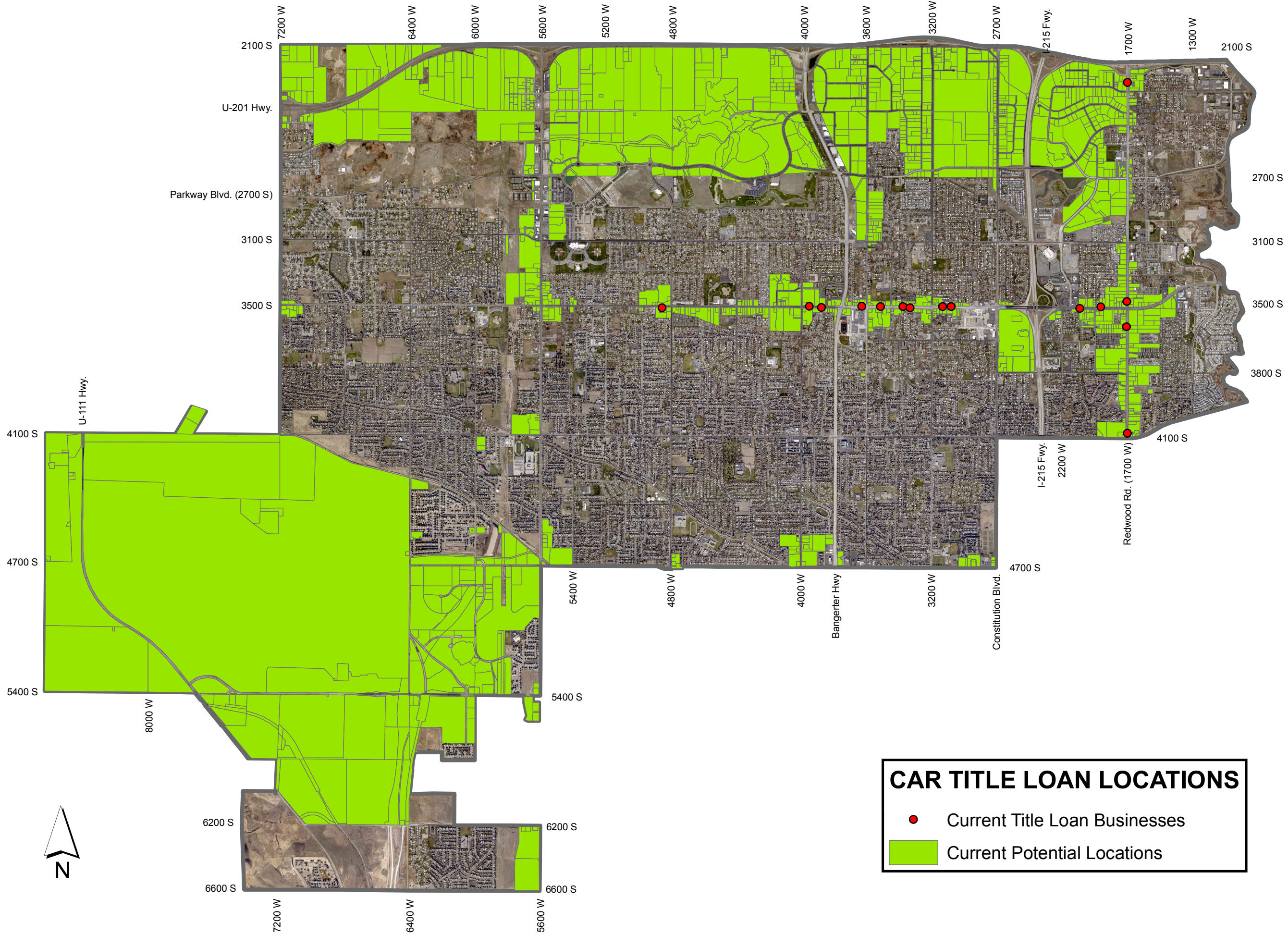
Motion: Commissioner Mills moved for approval.

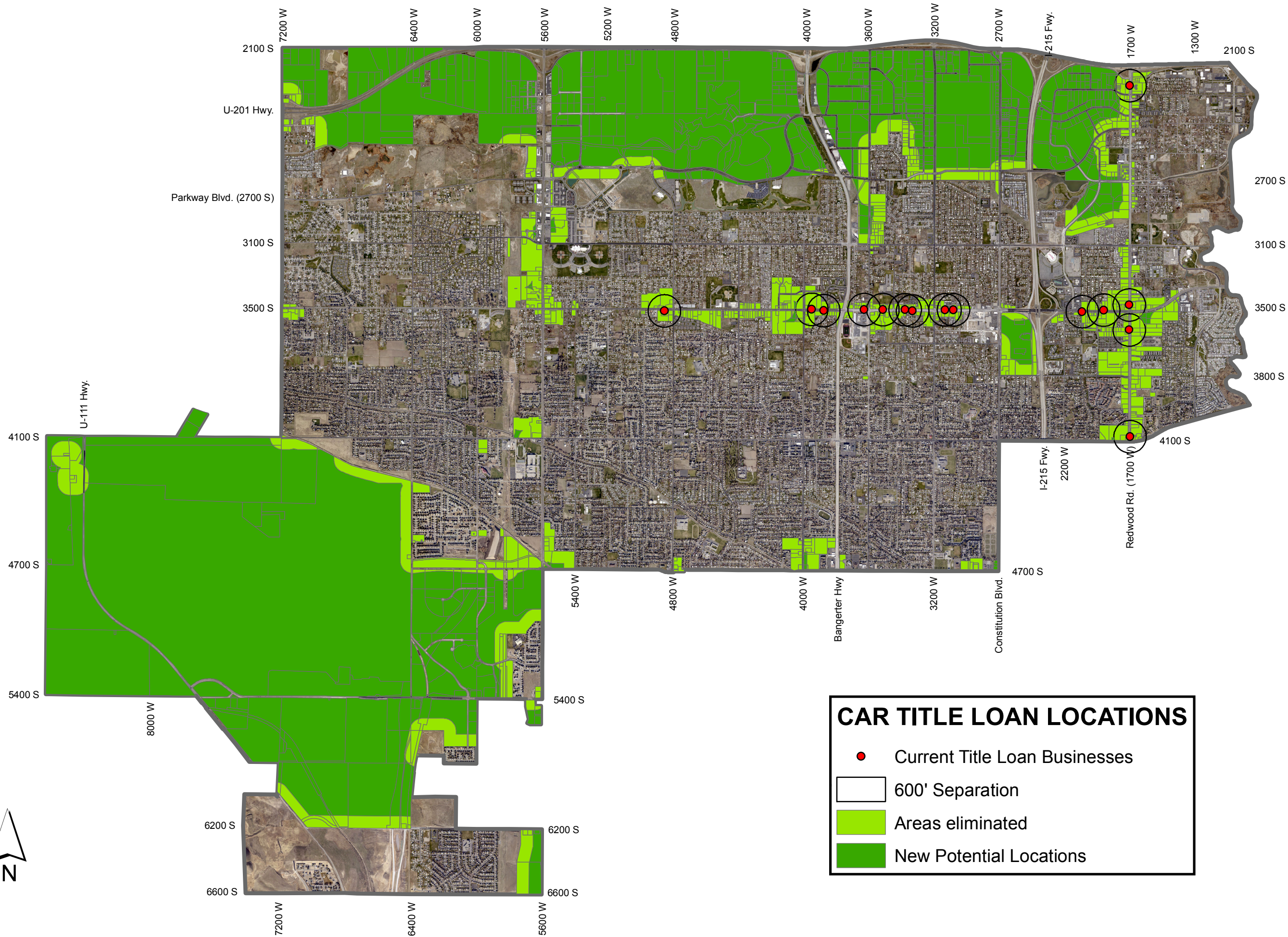
Commissioner Fuller seconded the motion.

Roll call vote:

Commissioner Fuller	Yes
Commissioner Matheson	Yes
Commissioner Meaders	Yes
Commissioner Mills	Yes
Commissioner Thomas	Yes
Commission Tupou	Yes
Chairman Conder	Yes

Unanimous-ZT-5-2014 Approved







CAR TITLE LOAN LOCATIONS

- Current Title Loan Businesses
- 600' Separation
- Areas eliminated
- New Potential Locations



CAR TITLE LOAN LOCATIONS

-  Current Title Loan Businesses
-  New Potential Locations

Item #:	
Fiscal Impact:	\$76,162.50
Funding Source:	Class C
Account #:	
Budget Opening Required:	Yes

ISSUE:

Approval of a Federal Aid Agreement with UDOT for traffic signal improvements at three intersections on 4100 South, 1300 West, 2700 West and 4000 West.

SYNOPSIS:

UDOT has allocated \$1,500,000 for traffic signal improvements at the intersections of 4100 South at 1300 West, 2700 West and 4000 West from the Federal Highway Safety Improvement Program (HSIP). This project will reconstruct the signal systems at the intersections as well as improve pedestrian ramps to meet ADA requirements. The new signals systems will include improved vehicle detection that will provide dilemma zone detection and make it easier to add a future adaptive signal control system on the network to improve east/west traffic flow. Left turn phasing will also be added to improve safety for left turning vehicles.

BACKGROUND:

In 2012 UDOT staff from the Traffic and Safety Division identified the project intersections as crash hot spots and approached City staff participate in a Road Safety Audit (RSA). The results of the RSA recommended that the traffic signals should be reconstructed to meet current safety standards and that the pedestrian ramps should be reconstructed to meet ADA standards. However, a funding source for the recommended improvements was not identified at the time.

In July 2014 City staff became aware that UDOT had allocated funds for this project after reviewing a list of planned UDOT projects in the City. The City funds for this project are the City's portion of the match required on all Federal Aid projects. Taylorsville City is responsible for the match on 50% of 1300 West intersection and 25% of the 2700 West intersection.

RECOMMENDATION:

Approve Federal Aid Agreement with UDOT.

SUBMITTED BY:

Erik W. Brondum, P.E., Transportation Engineer

WEST VALLEY CITY, UTAH

RESOLUTION _____

A RESOLUTION APPROVING A FEDERAL AID AGREEMENT WITH THE UTAH DEPARTMENT OF TRANSPORTATION FOR TRAFFIC SIGNAL IMPROVEMENTS AT 4100 SOUTH 1300 WEST, 4100 SOUTH 2700 WEST, AND 4100 SOUTH 4000 WEST.

WHEREAS, West Valley City (the “City”) desires to participate with the Utah Department of Transportation (“UDOT”) in improving the traffic signals at three intersections on 4100 South; and

WHEREAS, entering into federal aid agreement with UDOT will enable the City to access federal funds available for the improvements; and

WHEREAS, an agreement entitled, “Federal Aid Agreement for Local Agency Project” (the “Agreement”), prepared for execution by and between the City and UDOT, is attached hereto and sets forth the rights, duties and obligations of the Parties; and

WHEREAS, the City Council of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the residents of West Valley City to authorize the execution of the above-referenced Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of West Valley City, Utah, that the Agreement entitled, “Federal Aid Agreement for Local Agency Project” is hereby approved and the Mayor is hereby authorized to execute said document for and on behalf of West Valley City, subject to approval of the final form of the document by the City Manager and City Attorney’s Office.

PASSED, APPROVED, and MADE EFFECTIVE this _____ day of _____, 2014.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

State of Utah

Department of Transportation

Federal Aid Agreement for Local Agency Project CFDA No. 20.205	West Valley City - Daniel Johnson City of Taylorsville - John Taylor	Maximum Project Value Authorized \$1,500,000
PIN Number 12225 FINET Number 54335 FMIS Number F009721	Project Number F-LC35(248) PIN Description 4100 South; 4000 West, 2700 West & 1300 West Signal Improvements	Agreement Number (Assigned By Comptrollers) Date Executed

This Agreement is entered into this ____ day of _____, 20____, by and between the Utah Department of Transportation ("UDOT"), **West Valley City and City of Taylorsville** ("Local Agency"), a political subdivision of the State of Utah.

The (City/County) has a project that will receive financing from federal-aid highway funds. The Project consists of **4100 S; 4000 W, 2700 W & 1300 W Signal Imps**, located at **West Valley City and Taylorsville City** and identified as project number **F-LC35(248)**;

Pursuant to 23 CFR 635.105, UDOT has the responsibility to oversee the federal aid projects to ensure adequate supervision and inspection so the projects are completed in conformance with the approved plans and specifications, including compliance with all federal requirements;

In instances where UDOT does not have jurisdiction over the road where the Project is being performed, UDOT may arrange for the Local Governmental Agency with jurisdiction of the road to perform the work with its own forces or by contract; and

This Agreement describes the respective roles and requirements of UDOT and the City/County to ensure compliance with the federal requirements for the receipt of federal funding for the Project.

State Wide Transportation Improvement Program STIP 2014 - 2017

Fund*	Prior	2014	2015	2016	2017	Total	Fed Aid	State	Other	Pct
HSIP	\$0	\$125,000	\$1,375,000	\$0	\$0	\$1,500,000	\$1,398,450	\$0	\$101,550	6.77%
Total:	\$0	\$125,000	\$1,375,000	\$0	\$0	\$1,500,000	\$1,398,450	\$0	\$101,550	6.77%

The Local Agency match will be a split between West Valley City and Taylorsville. The project is broken into 3-\$500K intersections and Taylorsville is responsible for 50% of 1300 W, 25% of 2700 W, and 0% of 4000 W. Of the initial match Taylorsville will pay \$25,387.50 and West Valley City will pay \$76,162.50. If there are any overages on the project, they will be broken up based off what portion of the project overruns.

AGREEMENT

Now, therefore, the parties agree as follows:

I. Description of the Project.

II. UDOT's Roles and Responsibilities on a Federally Funded Local Government Project as follows:

- A. Oversee compliance with federal and state regulations.
- B. Ensure transportation project oversight as outlined in 23 CFR.
- C. Assign a UDOT Project Manager to:
 - 1. Assist the Local Government Project Manager to monitor scope, schedule, budget, and help track expenditures during all phases of the project.
 - 2. Assist in project risk monitoring by reviewing and discussing identified risks and mitigation efforts.
 - 3. For projects approved through the Wasatch Front Regional Council (WFRC), assist in early coordination with UDOT's Environmental staff during preparation of the environmental document.
 - 4. Prepare and process the federal aid agreement before project initiation.
 - 5. Help administer consultant qualifications-based selection, negotiation of contract, and contracting process for all phases of the Project.
 - 6. Assist the local agency to process and approve Consultant Pay Requests.
 - 7. Coordinate and participate in design review meetings to ensure the federally-approved, UDOT design process is followed.
 - 8. Coordinate to ensure ongoing communication with the local project sponsor.
 - 9. Coordinate payment of local government matching, betterment or other funding to UDOT prior to project advertisement.
 - 10. Assist the Local Agency in preparing and executing Utility Reimbursement Agreements as required.
 - 11. Coordinate betterment items and finalize agreements prior to construction advertising.
 - 12. Assist with the federally-approved construction advertising and award processes.
 - 13. Coordinate with the Local Project Manager to review and recommend change orders for approval.
 - 14. Coordinate the UDOT project closeout process.

III. Local Agency Roles and Responsibilities on a Federally Funded Local Government Project.

The Local Agency shall manage the Project in compliance with federal and state laws and regulations. The Local Agency shall monitor the quality of work being performed on the Project and daily activities and issues with the consultants. For Class B and C roads, the Local Agency assumes responsibility for the design, construction quality and maintenance of the road.

- A. The Local Agency shall assign a representative to serve as the Local Project Manager to:
 - 1. Research, understand, and take responsibility for federal requirements by its acceptance of federal funds.
 - 2. Coordinate with the UDOT Project Manager concerning the funding.
 - 3. Committee (MPO's, etc.) for funding and expenditure time-frames, scope issues and delivery schedule.
 - 4. Manage the day-to-day activities of the Project as follows:
 - a. Consultant and professional services used on the Project.
 - b. The Local Agency shall recommend and approve consultant pay requests.
 - c. Project scope, schedule, budget, and quality.
 - d. Coordination of details, decisions and impacts with the local jurisdiction's community councils, commissions, legal counsel, department heads, political leads, engineering and public works departments, etc.
 - e. Coordination with the assigned UDOT Project Manager.
 - f. Project risk monitoring by reviewing and discussing identified risks and mitigation efforts.
 - g. Monitor project schedule and progress of all project tasks to ensure a timely delivery of the project.
 - h. Schedule discussion should be held in all preconstruction and construction project progress meeting.

- i. Oversee project compliance with federal and state transportation project processes. These responsibilities include (but are not limited to):
 - 1) Participate in the federally approved consultant qualifications-based selection, negotiation of contract, and contracting process for all phases of the project.
 - 2) Participate as the active lead in project team meetings as well as all field and plan reviews.
 - 3) Ensure NEPA Environmental clearances and approvals are obtained.
 - 4) Ensure current AASHTO, MUTCD, and UDOT design standards are met, or if not, ensure all design exceptions, waivers or deviations are obtained and have the necessary signatures in place.
 - 5) Ensure and certify that right of way acquisitions follow the federal Uniform Act and comply with state right of way acquisition policy, including rules, and meet all Project right of way commitments.
 - 6) Ensure construction standards and specifications are met.
 - 7) Oversee project construction management operations, progress, documentation and quality inspection to meet state and federal contract administration requirements.
- j. Coordinate with utilities to minimize project impacts and ensure needed relocations have the proper documentation, easements and agreements in place. The Local Agency shall provide to UDOT Region Utility Coordinator the Project utility certification prior to construction advertising.
- k. Ensure required documentation is in place before submitting the advertising package to UDOT for advertising through its federally-approved process.
- l. Coordinate with the UDOT Project Manager and Comptroller's Office to deposit the local match and betterment funds prior to advertising.
- m. Approve the final advertising package and obtain local signature approval before proceeding to advertise.
- n. Review the abstract of bids and recommend to the UDOT Project Manager award of the project.
- o. Attend Construction Coordination meetings and coordinate with the Consultant Resident Engineer (RE).
- p. Review all construction change orders for approval and submit them to UDOT Project Manager for review and processing.
- q. Review the project budget for changes related to change orders, quantity overruns, incentives, fuel and asphalt adjustments, etc.
- r. Ensure materials comply with the current UDOT Materials Testing and Acceptance Manual and the UDOT Minimum Sampling and Testing Requirements.
- s. Assist to provide all documentation needed for construction project close out including Buy America certification.
- t. Coordinate the project close out process by timely closing all open contracts and agreements.
- u. Provide right of way certification verifying all required right of way has been purchased prior to advertising.

This list of roles and responsibilities is not comprehensive but describes the general roles of the Local Agency.

IV. Funding. Upon signing this agreement, the Local Agency agrees to pay its estimated matching share in phases when requested by UDOT. Phases typically include environmental, design, right of way and construction. The local match for this project is represented by the percentages of the Total Project Value shown below. In addition the Local Agency agrees to pay 100% of the overruns that exceed **\$1,500,000** and any ineligible costs when requested by UDOT.

All project costs not reimbursed by FHWA shall be the responsibility of the Local Agency. No costs are eligible for federal aid reimbursement until authorized by the FHWA through Form R-709, Request for Federal Aid Project Approval, separate from this Local Agency Agreement.

For the specific funding for the project, see page 1, Statewide Transportation Improvement Program (STIP).

UDOT will request payment of matching shares and overruns through an email that will be sent to [Daniel Johnson](mailto:Daniel.Johnson@WVC-UT.GOV) at DANIEL.JOHNSON@WVC-UT.GOV and [John Taylor](mailto:John.Taylor@TAYLORSVILLEUT.GOV) at JTAYLOR@TAYLORSVILLEUT.GOV the

Local Agency Contacts. The Local Agency shall pay within 30 days after each payment request. The Local Agency shall make the check payable to the Utah Department of Transportation referencing the project number above and mail to UDOT Comptroller's Office, 4501 South 2700 West, Box 1415010, Salt Lake City, Utah 84114-1510.

The Local Agency shall be responsible for all costs associated with the project which are not reimbursed by the federal government. For a Joint Highway Committee project, the federal participation for construction engineering costs is limited to 20 percent of the construction contract costs.

Funds requested beyond the amount set forth will require execution of a Supplemental Financial Agreement.

If the project has cost overruns, the Local Agency shall pay the additional amount required within 30 days of receiving the invoice. Should the Local Agency fail to reimburse UDOT for costs that exceed the federal reimbursement, federal funding for other Local Agency projects or B&C road funds may be withheld until payment is made.

If the advanced amount exceeds the Local Agency's share of project cost, UDOT will return the amount of overpayment to the Local Agency upon financial closure of the project.

UDOT shall provide the Local Agency with a quarterly statement reflecting a cost summary of project costs.

V. Local Agency's Reimbursement Claims. The Local Agency shall bill UDOT for eligible federal aid project cost incurred after FHWA approval for authorization to proceed (form R709) and in conformity with applicable federal and state laws. Authorized Local Agency reimbursement claims should be submitted to UDOT Project Manager. Reimbursements to the Local Agency for right of way claims are classified as a pass-through of Federal funds from UDOT to the Local Agency. Expenditures by the Local Agency for general administration, supervision, and other overhead shall not be eligible for federal participation unless an indirect cost plan has been approved by the Federal government.

The Local Agency shall comply with 23 CFR Section 710.203 for FHWA reimbursement requests of real property acquisitions. A Local Agency shall not request reimbursement for excess acquisitions which are not eligible for FHWA reimbursement under 23 CFR Section 710.203 <http://www.gpoaccess.gov/cfr/retrieve.html>.

VI. Federal Aid Project Compliance. Local Agency shall comply with Title 23, USC, 23 CFR, Office of Management and Budget Circulars A-102, A-87 and A-133, policies and procedures promulgated by FHWA, UDOT Local Government and State Aid Project Guide, UDOT's Right of Way Operational Manual and the Federal Aid Project Agreement between UDOT and Federal Highway Administration concerning federal aid projects.

VII. Project Authorization for Federal Aid. The Local Agency, through UDOT, must obtain an Authorization to proceed from FHWA before beginning work on any federal aid project. Federal funds shall not participate in costs incurred prior to the date of authorization, except as provided by 23 CFR Section 1.9(b).

VIII. Liability. Local Agency agrees to hold harmless and indemnify UDOT, its officers, employees and agents (Indemnities) from and against all claims, suits and costs, including attorneys' fees for injury or damage of any kind, arising out of the Local Agency's negligent or intentional acts, errors or omissions in the performance of this Project, and from and against all claims, suits and costs, including attorneys' fees for injury or damage of any kind, arising out of Indemnities' failure to inspect, discover, correct, or otherwise address any defect, dangerous condition or other condition created by or resulting from Local Agency's negligent or intentional acts, errors or omissions in the performance of this Project.

Any periodic plan and specification review or construction inspection performed by UDOT arising out of the performance of the project does not relieve the Local Agency of its duty in the performance of this Project or to ensure compliance with acceptable standards.

IX. Single Audit Act. The Local Agency, as a sub-recipient of federal funds, shall adhere to the Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit

Organizations, <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. A sub-recipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provision of OMB Circular A-133. Upon conclusion of the A-133 audit, the Local Agency shall be responsible for ensuring that a copy of the report is transmitted to the Utah Department of Transportation, Internal Audit, 4501 S 2700 W, Box 148230, Salt Lake City, Utah 84114-8230.

X. **Maintenance.** The Local Agency shall properly maintain and restore each type of roadway, structure and facility as nearly as possible in its original condition as constructed or improved in accordance with state and federal requirements.

XI. **Utilities.** The Local Agency shall notify and cooperate with utility companies having facilities in the project limits in accordance with Utah Code Section 54-3-29.

The Local Agency shall certify, in accordance with 23 CFR Section 645.107(c), that utility relocation reimbursements to be made in accordance with the provisions of 23 CFR Section 645.107(a) do not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the Local Agency, or are solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway use as provided in 23 CFR Section 645.107(k).

The Local Agency shall determine reimbursement eligibility for identified relocations based on Local Agency Franchise Agreement or Ordinance. If not reimbursable, submit a written statement to UDOT that the Local Agency is "legally unable to reimburse the utilities" for relocation or protection work as part of the project. Utility relocations deemed to be reimbursable will be performed in accordance with 23 CFR Section 645, Utilities, Subpart A, and are subject to 23 CFR Section 635.410, Buy America Requirements.

In accordance with 23 CFR Section 645.209 (g), the Local Agency will provide a degree of protection to the highway that is equivalent to or more protective than Utah Administrative Rule 930-7, Utility Accommodation Rule.

XII. **Availability of Records.** For a period not less than three (3) years from the date of final project close out with federal government, the Local Agency accounting records pertaining to the federal aid project are to be kept available for inspection and audit by the state and federal government, or furnished upon request.

XIII. **Right of Way.** The Local Agency shall acquire all the required right of way for the Project in compliance with 23 CFR Section 710.309, 49 CFR Part 24 and UDOT Right of Way Operations Manual. The Local Agency shall use the right of way module in ePM for acquisitions. Once all the necessary right of way is acquired, the Local Agency shall obtain UDOT's certification. All the necessary right of way must be obtained before the project is advertised. No limitations concerning right of way shall be allowed. For UDOT right-of-way certifications required for advertising access the following: <http://www.udot.utah.gov/main/f?p=100:pg:::1:T,V:808,34728>.

For real property disposals the Local Agency shall comply with 23 CFR Sections 710.409 and 710.403. The Local Agency should have property management records, which identify inventories of real property considered excess to project needs. If a Local Agency determines that real property initially acquired as part of the project is declared excess and disposed of the Local Agency must comply with 23 CFR Sections 710.409 and 710.403. This requires that the Federal share of net income from the sale or lease of real property acquired with Federal assistance be used for Title 23 eligible projects. Refer to <http://www.gpoaccess.gov/cfr/retrieve.html> for additional information. The Local Agency shall deposit the net proceeds from the sale or lease with UDOT to be applied towards a Title 23 eligible project as authorized by the appropriate metropolitan planning organization or the Joint Highway Committee.

XIV. **Change in Scope and Schedule.** Local Agency recognizes that if a project scope changes from the original intent of the project application, the project will need to be re-evaluated by the responsible agency that programmed the project. Such a review may result in approval of the scope change, removal from the program, or adjustment in the federal aid funds programmed for the project.

Local Agency is responsible for the schedule of the project. If the project cannot progress as programmed, the responsible programming agency may advance other projects and require the project to wait for next available funding.

Any change orders required to meet the terms and conditions of the construction contract will be initiated by UDOT. UDOT will notify the Local Agency of any such change orders. At the Local Agency's request, UDOT will initiate change orders that cover betterments.

The Local Agency shall be responsible for 100% of the costs of all change orders on the Project not reimbursed by FHWA.

XV. UDOT Service Costs. UDOT may provide expertise in project management, contract preparation, design plan reviews, advertising, construction materials verification/certification, technical assistance, engineering services or other services as needed. Appropriate charges for these costs will be included in invoices to the Local Agency.

XVI. Additional Contracting Party. If the Local Agency desires to be an additional contracting party and an additional bondholder or obligee on the performance bond for Class B and C roads, a signed letter on official letterhead by the governing body of the Local Agency shall be an attachment to this Federal Aid Agreement. This provision applies only to federally funded projects and only on B and C roads.

XVII. Termination. This agreement may be terminated as follows:

1. By mutual agreement of the parties, in writing.
2. By either UDOT or the Local Agency for failure of the other party to fulfill their obligations as set forth in the provisions of this agreement. Thirty day written notice to terminate the Agreement will be provided to the other party describing the noncompliance of the Agreement. If the noncompliance is not remedied within the thirty day period, the Agreement shall terminate. However, if UDOT believes that the Local Agency is violating the Agreement that may result in harm to the public, inappropriate use of federal funds or if the Federal Highway Administration requests immediate termination, UDOT may terminate the Agreement without giving the thirty day notice.
3. By UDOT for the convenience of the state upon written notice to the Local Agency.
4. By UDOT, in the event that construction of the project for which this design engineering is undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed.

In the event of termination, the Local Agency shall pay all of UDOT's costs regardless of whether the Project is constructed.

XVIII. Miscellaneous.

1. This Agreement cannot be altered or amended, except pursuant to an instrument in writing signed by each of the parties.
2. If any term or provision of this Agreement or application to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement shall not be affected and each term, condition and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, so long as removing the severed portion does not materially alter the overall intent of this Agreement.
3. The failure of a party to insist upon strict performance of any provisions of this Agreement shall be construed as a waiver for future purposes with respect to any such provision or portion. No provision of this Agreement shall be waived unless such waiver is in writing and signed by the party alleged to have waived its rights.
4. Each undersigned represents and warrants that each has been duly authorized for all necessary action, as appropriate, to execute this Agreement for and on behalf of the respective parties
5. The parties shall not, by this Agreement nor by any act of either party, be deemed principal and agent, limited or general partners, joint ventures or to have any other similar relationship to each other in the conduct of their entities.

XIX. Content Review

Language content was reviewed and approved by the Utah AG's office on March 20, 2013.

GENERAL (FHWA) PROVISIONS FOR FEDERAL-AID AGREEMENT

1. **General Provisions:** The Grantee will comply with all Federal laws and requirements which are applicable to grant agreements, and imposed by the Federal Highway Administration (FHWA) concerning special requirements of law, program requirements, and other administrative requirements.
2. **Modification:** This agreement may be amended at any time by a written modification properly executed by both the FHWA and the Grantee.
3. **Retention and Custodial for Records:**
 - (a) Financial records, supporting documents, statistical records, and all other records pertinent to this instrument shall be retained for a period of three (3) years, with the following exception:
 - (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.
 - (2) Records for non-expendable property, if any, required with Federal funds shall be retained for three years after its final disposition.
 - (3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.
 - (b) The retention period starts from the date of the submission of the final expenditure report.
 - (c) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts, and transcripts.
4. **Equal Employment Opportunity:**
 - (a) The application/recipient agrees to incorporate in all contracts having a value of over \$10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.
 - (b) The application/recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contracts and/or issuing purchase orders for material, supplies, or equipment over \$10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.
 - (c) The applicant/recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap or age; and that it has or will develop and submit to FHWA by August 1 an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.
5. **Copeland Act:** All contracts in excess of \$2,000 for construction or repair awarded by recipient and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, and person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to FHWA.
6. **Davis-Bacon Act:** When required by the Federal program legislation, all construction contracts awarded by the recipient and its contractors or subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the G/CAO.
7. **Contract Work Hours and Safety Standards Act:** Where applicable, all contracts awarded by recipient in excess of \$2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulation (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages or every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act if applicable to construction work provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
8. **Access to Records:** All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.
9. **Civil Rights Act:** The recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied that benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:
 - (a) The primary purpose of and instrument is to provide employment, or
 - (b) Discriminatory employment practices will result in unequal treatment of persons who are or should be benefitting from the grant-aided activity.
10. **Nondiscrimination:** The applicant/recipient hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant/recipient receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.

11. **Rehabilitation Act:** The recipient shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education, and Welfare (45 CFR, Parts 80, 81, and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.
12. **Government Rights (Unlimited):** FHWA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FHWA.
13. Accountability of equipment acquired in prior years will be transferred to the current year Grant. An updated inventory list will be provided by FHWA.
14. This Grant is subject to the conditions specified in the enclosed Negotiation Document.
15. **Drug-Free Workplace:** By signing this agreement, the recipient certifies that it is in compliance with the Drug-Free Workplace Act (41 U.S.C. Sec. 701 et seq.) And implementing regulations (49 CFR Part 29), which require, in part, that grantees prohibit drug use in the workplace, notify the FHWA of employee convictions for violations of criminal drug laws occurring in the workplace, and take appropriate personnel action against a convicted employee or require the employee to participate in a drug abuse assistance program.
16. **Limitation on Use of Federal Funds for Lobbying for Grants in Excess of \$100,000:** By signing this agreement the recipient declares that it is in compliance with 31 U.S.C. Sec. 1352, which prohibits the use of Federally appropriated funds to influence a Federal employee, officer, or Member of Congress in connection with the making or modification of any Federal grant, loan, contract, or cooperative agreement. Unless the payment of funds is otherwise reported to FHWA, signing this agreement constitutes a declaration that no funds, including funds not Federally appropriated, were used or agreed to be used to influence this grant. Recipients of subgrants in excess of \$100,000 must make the same declarations to the grant recipient. With respect to the payment of funds not Federally appropriated by the recipient and sub-recipients, the recipient must report to the FHWA the name and address of each person paid or performing services for which payment is made, the amount paid, and the activity for which the person was paid.

50036.2-M-34b

Form FHWA-1273 (Rev. 3-94)

LOCAL AGENCY#1

West Valley City Official

By _____

Date _____

Mayor Ron Bigelow

Taylorsville, UDOT Region Director, and Comptroller signatures found on page 10

GENERAL (FHWA) PROVISIONS FOR FEDERAL-AID AGREEMENT

1. **General Provisions:** The Grantee will comply with all Federal laws and requirements which are applicable to grant agreements, and imposed by the Federal Highway Administration (FHWA) concerning special requirements of law, program requirements, and other administrative requirements.
2. **Modification:** This agreement may be amended at any time by a written modification properly executed by both the FHWA and the Grantee.
3. **Retention and Custodial for Records:**
 - (a) Financial records, supporting documents, statistical records, and all other records pertinent to this instrument shall be retained for a period of three (3) years, with the following exception:
 - (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation claims, or audit findings involving the records have been resolved.
 - (2) Records for non-expendable property, if any, required with Federal funds shall be retained for three years after its final disposition.
 - (3) When records are transferred to or maintained by FHWA, the 3-year retention requirement is not applicable to the recipient.
 - (b) The retention period starts from the date of the submission of the final expenditure report.
 - (c) The Secretary of Transportation and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient, and its contractors and subcontractors, to make audits, examinations, excerpts, and transcripts.
4. **Equal Employment Opportunity:**
 - (a) The application/recipient agrees to incorporate in all contracts having a value of over \$10,000, the provisions requiring compliance with Executive Order 11246, as amended, and implementing regulations of the United States Department of Labor at 41 CFR 60, the provisions of which, other than the standard EEO clause and applicable goals for employment of minorities and women, may be incorporated by reference.
 - (b) The application/recipient agrees to ensure that its contractors and subcontractors, regardless of tier, awarding contracts and/or issuing purchase orders for material, supplies, or equipment over \$10,000 in value will incorporate the required EEO provisions in such contracts and purchase orders.
 - (c) The applicant/recipient further agrees that its own employment policies and practices will be without discrimination based on race, color, religion, sex, national origin, handicap or age; and that it has or will develop and submit to FHWA by August 1 an affirmative action plan consistent with the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607, and the Affirmative Action Guidelines, 29 CFR 1608.
5. **Copeland Act:** All contracts in excess of \$2,000 for construction or repair awarded by recipient and its contractors or subcontractors shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, and person employed in the construction, completion, or repair of public work, or give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to FHWA.
6. **Davis-Bacon Act:** When required by the Federal program legislation, all construction contracts awarded by the recipient and its contractors or subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the G/CAO.
7. **Contract Work Hours and Safety Standards Act:** Where applicable, all contracts awarded by recipient in excess of \$2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulation (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages or every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act if applicable to construction work provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
8. **Access to Records:** All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FHWA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcripts.
9. **Civil Rights Act:** The recipient shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied that benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient received Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where:
 - (a) The primary purpose of and instrument is to provide employment, or
 - (b) Discriminatory employment practices will result in unequal treatment of persons who are or should be benefitting from the grant-aided activity.
10. **Nondiscrimination:** The applicant/recipient hereby agrees that, as a condition to receiving any Federal financial assistance from the Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), related nondiscrimination statutes, and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the applicant/recipient receives Federal financial assistance. The specific requirements of the United States Department of Transportation standard Civil Rights assurances with regard to the States' highway safety programs (required by 49 CFR 21.7 and on file with the U.S. DOT) are incorporated in this grant agreement.
11. **Rehabilitation Act:** The recipient shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education, and Welfare (45 CFR, Parts 80, 81, and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

12. **Government Rights (Unlimited):** FHWA shall have unlimited rights for the benefit of the Government in all other work developed in the performance of this Agreement, including the right to use same on any other Government work without additional cost to FHWA.
13. Accountability of equipment acquired in prior years will be transferred to the current year Grant. An updated inventory list will be provided by FHWA.
14. This Grant is subject to the conditions specified in the enclosed Negotiation Document.
15. **Drug-Free Workplace:** By signing this agreement, the recipient certifies that it is in compliance with the Drug-Free Workplace Act (41 U.S.C. Sec. 701 et seq.) And implementing regulations (49 CFR Part 29), which require, in part, that grantees prohibit drug use in the workplace, notify the FHWA of employee convictions for violations of criminal drug laws occurring in the workplace, and take appropriate personnel action against a convicted employee or require the employee to participate in a drug abuse assistance program.
16. **Limitation on Use of Federal Funds for Lobbying for Grants in Excess of \$100,000:** By signing this agreement the recipient declares that it is in compliance with 31 U.S.C. Sec. 1352, which prohibits the use of Federally appropriated funds to influence a Federal employee, officer, or Member of Congress in connection with the making or modification of any Federal grant, loan, contract, or cooperative agreement. Unless the payment of funds is otherwise reported to FHWA, signing this agreement constitutes a declaration that no funds, including funds not Federally appropriated, were used or agreed to be used to influence this grant. Recipients of subgrants in excess of \$100,000 must make the same declarations to the grant recipient. With respect to the payment of funds not Federally appropriated by the recipient and sub-recipients, the recipient must report to the FHWA the name and address of each person paid or performing services for which payment is made, the amount paid, and the activity for which the person was paid.

50036.2-M-34b

Form FHWA-1273 (Rev. 3-94)

Utah Department of Transportation

By _____
Region Director

Date _____

LOCAL AGENCY #2

City of Taylorsville Official

By _____

Date _____

Mayor Larry Johnson

West Valley City signatures found on page 8.

UDOT Comptroller

By _____
Comptroller's Office

Date _____



Consultant Services

Federal Aid Agreement Review/Approval Routing Form

STATE OF UTAH
UTAH DEPARTMENT OF TRANSPORTATION
ENGINEERING SERVICES

TODAY'S DATE 10/6/2014
PM REQUEST DATE 10/3/2014

FEDERAL AID

Project No.: F-LC35(248) **PIN No.:** 12225
PIN Description: Cnty:FA-2172; MP 5.50 - 5.50 & Cnty:FA- **FINET Prog Code No.:** 54335

UDOT Project Manager	UDOT Contract Administrator
Oanh Amber Le-Spradlin 2010 South 2760 West Salt Lake City, UT 84104 (801)975-4819 oanhle@utah.gov	Michael R. Butler Udot PO Box 148490 Salt Lake City Utah 84114-8490 (801)965-4419 michaelbutler@utah.gov

Local Government #1	Local Government #2
West Valley City 3600 CONSTITUTION BLVD West Valley City, UT 84119-2057 Daniel Johnson, (801) 963-3228 DANIEL.JOHNSON@WVC-UT.GOV	City of Taylorsville 2600 W TAYLORSVILLE BLVD Taylorsville, UT 84118-2208 John Taylor, (801) 963-5400 JTAYLOR@TAYLORSVILLEUT.GOV

Project Value	\$1,500,000.00
Federal Match	\$1,398,450.00
Taylorsville City Match	\$25,387.50
West Valley City Match	\$76,162.50
State Match	\$0

Please print six single sided copies and route for review/approval to the individuals listed below, using the contact information above. Please sign where appropriate on page #1 in the document before forwarding to the next individual on the list. Please route in the following order:

Routing Sequence	Date
1 Sent to Local Government #1	10/6/2014
2 Review/Approved Local Government #1	
3 Review/Approved Local Government #2	
4 Review/Approved UDOT Region Director (c/o UDOT PM)	
5 Consultant Services	
6 Sent to UDOT Comptroller	
7 Review/Approved UDOT Comptroller	

Item #:	_____
Fiscal Impact:	<u>\$0.00</u>
Funding Source:	_____
Account #:	_____
Budget Opening Required:	<u>No</u>

ISSUE:

A resolution approving a franchise agreement with Teleport Communications America, LLC to construct and maintain a telecommunications network in the City.

SYNOPSIS:

This Franchise Agreement will allow Teleport Communications America to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City.

BACKGROUND:

Applications for telecommunications networks in West Valley City are governed by Chapter 20-5 of the City Code. The franchise granted by this Agreement is for a 10 year period, with the option to renew for an additional 10 years with the same terms and conditions. Chapter 20-6 of the City Code permits the City to require all telecommunications providers to collect taxes from their customers and deposit them with the Utah State Tax Commission. This agreement memorializes this provision as well as acknowledging Teleport Communications America's duty to secure permits from Public Works for any excavation or construction.

RECOMMENDATION:

City staff recommends approval of the resolution.

SUBMITTED BY:

J. Eric Bunderson, City Attorney

WEST VALLEY CITY, UTAH

RESOLUTION NO. _____

A RESOLUTION APPROVING A FRANCHISE AGREEMENT WITH TELEPORT COMMUNICATIONS AMERICA, LLC AND WEST VALLEY CITY FOR A TELECOMMUNICATIONS NETWORK IN THE CITY.

WHEREAS, Teleport Communications America, LLC (herein “Teleport Communications”) desires to provide voice, data or video transmission services within the City and in connection therewith establish a telecommunication network in, under, along, over and across present and future rights-of-way of the City; and

WHEREAS, Chapter 20-5 of the West Valley City Municipal Code governs the application and review process for telecommunications franchises in the City; and

WHEREAS, the City, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide Teleport Communications a nonexclusive franchise to operate a telecommunications network in the City; and

WHEREAS, an agreement has been prepared for execution by and between the City and Teleport Communications. The Agreement, a copy of which is attached hereto and entitled “Franchise Agreement” sets forth the rights, duties, and obligations of each of the parties with respect thereto; and

WHEREAS, the City Council of West Valley City, Utah, does hereby determine that it is in the best interest of the health, safety, and welfare of the citizens of West Valley City to authorize the execution of the Agreement with Teleport Communications;

NOW, THEREFORE, BE IT RESOLVED by the City Council of West Valley City, Utah that the Agreement entitled, “Franchise Agreement” is hereby approved in substantially the form attached, and that the Mayor is hereby authorized to execute said Agreement for and on behalf of the City, subject to approval of the final form of the Agreement by the City Manager and the City Attorney’s Office.

PASSED and APPROVED this _____ day of _____, 2014.

WEST VALLEY CITY

MAYOR

ATTEST:

CITY RECORDER

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between West Valley City (hereinafter "City"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 3600 Constitution Boulevard; West Valley City, Utah 84119, and Teleport Communications America, LLC (hereinafter "Provider"), a limited liability company organized under the laws of the State of Delaware with its principal offices at One AT&T Way, Bedminster, NJ 07921, (hereinafter "Party" individually and "Parties" collectively).

WITNESSETH:

WHEREAS, the Provider desires to provide voice, data or video transmission services within the City and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the City; and

WHEREAS, the City has enacted Chapter 20-5 of the West Valley City Municipal Code (hereinafter "Telecommunications Rights-of-Way Ordinance"), which governs the application and review process for telecommunications franchises in the City; and

WHEREAS, the City has subsequently enacted Chapter 20-6 of the West Valley Municipal Code (hereinafter the "Mobile Telephone Service Revenue Act") which – pursuant to Utah law – permits the City to require all telecommunications providers to collect taxes from their customers and deposit them with the Utah State Tax Commission; and

WHEREAS, the City, in exercise of its management of public rights-of-way, believes that it is in the best interest of the public to provide the Provider a nonexclusive franchise to operate a telecommunications network in the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, and for other good and valuable consideration, the City and the Provider agree as follows:

ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE

1.1 **Agreement.** Upon approval by the City Council and execution by the Parties, this Agreement shall be deemed to constitute a contract by and between the City and the Provider.

1.2 **Ordinance.** The City has adopted The Telecommunications Rights-of-Way Ordinance and Mobile Telephone Service Revenue Act (collectively referred to as the "Ordinances"), which are incorporated herein by reference and attached as Exhibit A. The Provider acknowledges that it has had an opportunity to read and become familiar with the

Ordinances. The Parties agree that the provisions and requirements of the Ordinances are material terms of this Agreement, and that each Party hereby agrees to be contractually bound to comply with the terms of the Ordinances. The definitions in the Ordinances shall apply herein unless a different meaning is indicated. Nothing in this section shall be deemed to require the Provider to comply with any provision of the Ordinances which is determined to be unlawful or beyond the City's authority.

1.3 **Ordinance Amendments.** The City reserves the right to amend the Ordinances at any time. The City shall give the Provider notice and an opportunity to be heard concerning any proposed amendments. If there is any inconsistency between the Provider's rights and obligations under the Ordinances as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the Provider agrees to comply with any such amendments.

1.4 **Franchise Description.** The telecommunications franchise provided hereby shall confer upon the Provider the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in the present and future public rights-of-way in the City. The franchise does not grant to the Provider the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the Provider from (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the Provider's system within the City for such purposes, or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.

1.5 **Licenses.** The Provider acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Ordinances.

1.6 **Relationship.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither Party is authorized to, nor shall either Party act toward third persons or the public in a manner that would indicate any such relationship with each other.

ARTICLE 2. FRANCHISE FEE

2.1 **Telecommunications License Tax.** Pursuant to Utah law, the fee required under this Agreement is satisfied by the Provider's collection and proper deposit of Telecommunications License Tax with the Utah State Tax Commission. The Provider shall collect and deposit with the Utah State Tax Commission Municipal Telecommunications License Tax at the rate and in the manner currently provided by Utah Code Ann. § 10-1-401 et seq., less any business license fee or business license tax imposed by the City.

2.2 **Equal Treatment.** City agrees that the fees imposed in the City are imposed on a competitively neutral basis, and that any competing third party shall also be subject to fees at the same rate.

2.3 **Additional Fees.** The payment of the Franchise Fee does not prevent the City from requiring the payment of other fees imposed in accordance with Utah Code Ann. § 72-7-102, relating to management costs caused by Provider's activities in the right-of-way.

ARTICLE 3. TERM AND RENEWAL

3.1 **Term and Renewal.** The franchise granted to Provider shall be for a period of ten (10) years commencing on the first day of the month following this Agreement, unless this franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein shall be renewed by the Provider upon the same terms and conditions as contained in this Agreement for an additional ten (10) year term, unless the Provider gives written notice to the City's representative designated herein written notice of the Provider's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.

3.2 **Rights of Provider Upon Expiration or Revocation.** Upon expiration of the franchise granted herein, whether by lapse of time, by agreement between the Provider and the City, or by revocation or forfeiture, the Provider shall have the right to remove from the rights-of-way any and all of its system, but in such event, it shall be the duty of the Provider, immediately upon such removal, to restore the rights-of way from which such system is removed to as good condition as the same was before the removal was effected.

ARTICLE 4. PUBLIC USE RIGHTS

4.1 **City Uses of Poles and Overhead Structures.** The City shall have the right, without cost, to use all poles owned by the Provider within the City for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the City shall be for activities owned, operated or used by the City for any public purposes and shall not include the provision of telecommunications service to third parties.

4.2 **Limitations on Use Rights.** Nothing in this Agreement shall be construed to require the Provider to increase pole capacity, alter the manner in which the Provider attaches equipment to the poles, or alter the manner in which the Provider operates and maintains its equipment. Such City attachments shall be installed and maintained in accordance with the reasonable requirements of the Provider and the current National Electrical Safety Code. City attachments shall be attached or installed only after written approval by the Provider, which approval will be processed in a timely manner and will not be unreasonably withheld.

4.3 **Maintenance of City Facilities.** The City's use rights shall also be subject to the parties reaching an agreement regarding the City's maintenance of the City attachments.

ARTICLE 5. POLICE POWERS

5.1 The City expressly reserves, and the Provider expressly recognizes, the City's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY

6.1 **Meet to Confer.** The Provider and the City recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the Provider conducts its business and the way the City regulates the business. In recognition of the present state of uncertainty respecting these matters, the Provider and the City each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

6.2 **Severability.** If any section, sentence, paragraph, term or provision of this Agreement or the Ordinances is for any reason determined to be or rendered illegal, invalid or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the Parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the City is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the rights-of-way in a manner similar to that provided in this Agreement, the Ordinances, and the City's excavation ordinance. For the Provider, "material consideration" is its ability to use the rights-of-way for telecommunication purposes in a manner similar to that provided in this Agreement, the Ordinances, and the City's Excavation Ordinance.

ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES

7.1 Grounds for Termination. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) The Provider fails to make timely payments of the Franchise Fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the City of such failure;
- (b) The Provider, by act or omission, materially violates a material duty herein set forth in any particular within the Provider's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Provider notice of such determination, the Provider, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the City may declare the franchise forfeited and this Agreement terminated, and thereupon, the Provider shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Provider; or
- (c) The Provider becomes insolvent, unable or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Provider within sixty (60) days.

7.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the Provider from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

7.3 Remedies at Law. In the event the Provider or the City fails to fulfill any of its respective obligations under this Agreement, the City or the Provider, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have

the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.

7.4 **Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Provider. This Agreement shall not be deemed to create any right in any person who is not a Party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a Party hereto).

ARTICLE 8. PARTIES DESIGNEES

8.1 **City Designee and Address.** The West Valley City Public Works Director or his/her designee(s) shall serve as the City's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Ordinances, all notices from the Provider to the City pursuant to or concerning this Agreement, shall be delivered to the City's representative at 3600 Constitution Boulevard, West Valley City, Utah 84119, or such other officer and address as the City may designate by written notice to the Provider.

8.2 **Provider Designee and Address.** The Provider's Vice President of Administration or his/her designee(s) shall serve as the Provider's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Ordinances, all notices from the City to the Provider pursuant to or concerning this Agreement, shall be delivered to Provider's headquarter offices at One AT&T Way, Bedminster, NJ 07921

and such other office as the Provider may designate by written notice to the City.

8.3 **Failure of Designee.** The failure or omission of the City's or Provider's representative to act shall not constitute any waiver or estoppel by the City or Provider.

ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 **Insurance.** Prior to commencing operations in the City pursuant to this Agreement, the Provider shall furnish to the City evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the Provider is effectively self-insured if the Provider has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the Provider from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage reasonably acceptable to the City.

9.2 **Indemnification.** The Provider agrees to indemnify, defend and hold the City harmless from and against any and all claims, demands, liens, and all liability or damage of

whatsoever kind on account of or arising from the Provider's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the City in defense of such claims. The City shall promptly give written notice to the Provider of any claim, demand, lien, liability, or damage with respect to which the City seeks indemnification and, unless in the City's judgment a conflict of interest may exist between the Parties with respect to the claim, demand, lien, liability, or damage, the City shall permit the Provider to assume the defense of such with counsel of the Provider's choosing, unless the City reasonably objects such counsel. Notwithstanding any provision of this section to the contrary, the Provider shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the City.

ARTICLE 10. GENERAL PROVISIONS.

10.1 **Binding Agreement.** The Parties represent that (a) when executed by their respective Parties, this Agreement shall constitute legal and binding obligations of the Parties; and (b) that each Party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the Parties.

10.2 **Utah Law.** This Agreement shall be interpreted pursuant to Utah law.

10.3 **Time of Essence.** Time shall be of the essence of this Agreement.

10.4 **Interpretation of Agreement.** The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

10.5 **No Presumption.** All Parties have participated in preparing this Agreement. Therefore, the Parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting Party.

10.6 **Entire Agreement and Amendments.** This Agreement and all attachments hereto constitute and represent the entire agreement and understanding between the parties hereto and replaces any previous agreement, understanding or negotiation between the parties with respect to the subject matter hereof, and may be modified or amended, supplemented, or changed only by the written agreement of the parties, including the formal approval of the City Council. No oral modifications or amendments shall be effective.

SIGNED and ENTERED INTO this ____ day of _____, 2014.

“City”

West Valley City

Mayor

ATTEST:

City Recorder

APPROVAL AS TO FORM:

City Attorney

“Provider”

Teleport Communications America, LLC, a Delaware
limited liability company

By: _____

Its: _____

STATE OF New Jersey)
COUNTY OF Somerset) :ss.

On the 29th day of October, 20 14 personally appeared before me
Christopher J. Och, who being by me duly sworn did say that he or she is the
Assistant Secretary of Teleport Communications America, LLC
and that the foregoing instrument was signed on behalf of said company by authority of its board of
directors and/or its company documents; and he or she acknowledged to me that said company executed
the same.

Notary Public

Residing at: _____

My Commission Expires: _____